

## Department of Energy

## § 603.1340

Department of Energy at 10 CFR 600, Subpart B.

### § 603.1285 Intellectual property.

Patents, trademarks, copyrights, mask works, protected data, and other forms of comparable property protected by Federal law and foreign counterparts.

### § 603.1290 Participant.

A consortium member or, in the case of an agreement with a single for-profit entity, the recipient. Note that a for-profit participant may be a firm or a segment of a firm (e.g., a division or other business unit).

### § 603.1295 Periodic audit.

An audit of a participant, performed at an agreed-upon time (usually a regular time interval), to determine whether the participant as a whole is managing its Federal awards in compliance with the terms of those awards. Appendix A to this part describes what such an audit may cover. A periodic audit of a participant differs from an award-specific audit of an individual award (as defined in § 603.1220).

### § 603.1300 Procurement contract.

A federal government procurement contract. It is a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other non-government entity when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition of the term “contract” at 48 CFR 2.101.

### § 603.1305 Program income.

Gross income earned by the recipient or a participant that is generated by a supported activity or earned as a direct result of a TIA. Program income includes but is not limited to: income from fees for performing services; the use or rental of real property, equipment, or supplies acquired under a TIA; the sale of commodities or items fabricated under a TIA; and license fees and royalties on patents and copyrights. Interest earned on advances of Federal funds is not program income.

### § 603.1310 Program official.

A federal government program manager, project officer, scientific officer, or other individual who is responsible for managing the technical program being carried out through the use of a TIA.

### § 603.1315 Property.

Real property, equipment, supplies, and intellectual property, unless stated otherwise.

### § 603.1320 Real property.

Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

### § 603.1325 Recipient.

An organization or other entity that receives a TIA from DOE. Note that a for-profit recipient may be a firm or a segment of a firm (e.g., a division or other business unit).

### § 603.1330 Supplies.

Tangible property other than real property and equipment. Supplies have a useful life of less than one year or an acquisition cost of less than \$5,000 per unit.

### § 603.1335 Termination.

The cancellation of a TIA, in whole or in part, at any time prior to either:

(a) The date on which all work under the TIA is completed; or

(b) The date on which Federal sponsorship ends, as given in the award document or any supplement or amendment thereto.

### § 603.1340 Technology investment agreement.

A TIA is a special type of assistance instrument used to increase involvement of commercial firms in the DOE research, development and demonstration (RD&D) programs. A TIA, like a cooperative agreement, requires substantial Federal involvement in the technical or management aspects of the project. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the

intellectual property provisions. A TIA is either:

(a) A type of cooperative agreement with more flexible provisions tailored for involving commercial firms (as distinct from a cooperative agreement subject to all of the requirements in 10 CFR part 600), but with intellectual property provisions in full compliance with the DOE intellectual property statutes (i.e., Bayh-Dole statute and 42 U.S.C. sections 2182 and 5908, as implemented in 10 CFR 600.325); or

(b) An assistance transaction other than a cooperative agreement, if its intellectual property provisions vary from the Bayh-Dole statute and 42 U.S.C. sections 2182 and 5908, which require the Government to retain certain intellectual property rights, and require differing treatment between large businesses and nonprofit organizations or small businesses.

#### APPENDIX A TO PART 603—APPLICABLE FEDERAL STATUTES, EXECUTIVE ORDERS, AND GOVERNMENT-WIDE REGULATIONS

Whether the TIA is a cooperative agreement or a type of assistance transaction other than a cooperative agreement, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes, Executive Orders and Government-wide regulations. This appendix lists some of the more common requirements to aid in identifying ones that apply to a specific TIA. The list is not intended to be all-inclusive, however; the contracting officer may need to consult legal counsel to verify whether there are others that apply (e.g., due to a provision in the appropriations act for the specific funds in use or due to a statute or rule that applies to a particular program or type of activity).

##### A. CERTIFICATIONS

All financial assistance applicants, including applicants requesting a TIA must comply with the prohibitions concerning lobbying in a Government-wide common rule that the DOE has codified at 10 CFR part 601. The "List of Certifications and Assurances for SF 424(R&R)" on the DOE Applicant and Recipient page at <http://grants.pr.doe.gov> includes the Government-wide certification that must be provided with a proposal for a financial assistance award, including a TIA.

##### B. ASSURANCES THAT APPLY TO A TIA

Currently the DOE approach to communicating Federal statutes, Executive Orders and Government-wide regulations is to provide potential applicants a list of "National Policies Assurances to be Incorporated as Award Terms" in the program announcement (This list is available on the Applicant and Recipient Page at <http://grants.pr.doe.gov> under Award Terms). The contracting officer should follow this approach for announcements that allow for the award of a TIA. The contracting officer should normally incorporate by reference or attach the list of national policy assurances to a TIA award. Of these requirements, the following four assurances apply to all TIA:

1. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*) as implemented by DOE regulations at 10 CFR part 1040. These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive RD&D program (as opposed to suppliers from whom recipients purchase goods or services).

2. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*) as implemented by DOE regulations at 10 CFR part 1040. They apply to all financial assistance and require flow down to subrecipients.

3. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as implemented by DOE regulations at 10 CFR part 1041. They apply to all financial assistance and require flow down to subrecipients.

4. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

##### C. OTHER ASSURANCES

Additional assurance requirements may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis of race, color, religion, sex, or national origin.

2. If the RD&D involves human subjects or animals, it is subject to the requirements codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by DOE at 10 CFR part 745 and rules on animal acquisition, transport, care, handling and use in 9 CFR parts 1 through 4, Department of Agriculture rules and rules of the Department of Interior at 50 CFR parts 10 through 24 and Commerce at 50 CFR parts 217 through 277, respectively. See item a. or

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b., respectively, under the heading “Live organisms” included on the DOE “National Policy Assurances to Be Incorporated As Award Terms” on the Applicant and Recipient Page.

3. If the RD&D involves actions that may affect the environment, it is subject to the National Environmental Policy Act, and may also be subject to nation policy requirements for flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

4. If the project may impact a historic property, it is subject to the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*).

### APPENDIX B TO PART 603—FLOW DOWN REQUIREMENTS FOR PURCHASES OF GOODS AND SERVICES

A. As discussed in § 603.705, the contracting officer must inform recipients of any requirements that flow down to their purchases of goods or services (e.g., supplies or equipment) under their TIA. Note that purchases of goods or services differ from subawards, which are for substantive RD&D program performance.

B. Appendix A to 10 CFR part 600, subpart D lists eight requirements that commonly apply to firms’ purchases under grants or cooperative agreements. Of those eight, two that apply to all recipients’ purchases under a TIA are:

1. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*. A contractor submitting a bid to the recipient for a contract award of \$100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 10 CFR part 601, the DOE’s codification of the Government-wide common rule implementing this amendment.

2. *Debarment and suspension*. Recipients may not make contract awards that exceed the simplified acquisition threshold (currently \$100,000) and certain other contract awards may not be made to parties listed on the General Services Administration (GSA) “List of Parties Excluded from Federal Procurement and Nonprocurement Programs.” The GSA list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235). For further details, see subparts A through E of 10 CFR part 606, which is the DOE’s codification of the Government-

wide common rule implementing Executive Orders 12549 and 12689.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. *Equal Employment Opportunity*. If the TIA includes construction work, the contracting officer should inform the recipient that Department of Labor regulations at 41 CFR 60-1.4(b) prescribe a clause that must be incorporated into construction awards and subawards. Further details are provided in Appendix B to 10 CFR part 600 subpart D, item 1.

### PART 605—THE OFFICE OF ENERGY RESEARCH FINANCIAL ASSISTANCE PROGRAM

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### APPENDIX A TO PART 605—ENERGY RESEARCH PROGRAM OFFICE DESCRIPTIONS

AUTHORITY: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93-577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

SOURCE: 57 FR 40583, Sept. 3, 1992, unless otherwise noted.

#### § 605.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and